

SUPREME COURT, U. S.

Supreme Court, U.S.

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IN THE

Supreme Court of the United States

No. 70-11

CHEVRON OIL COMPANY,

Petitioner,

versus

GAINES TED HUSON,

Respondent.

**On Certiorari To The United States
Court Of Appeals, Fifth Circuit**

RESPONDENT'S BRIEF ON THE MERITS

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RESPONDENT'S BRIEF ON THE MERITS.

MAY IT PLEASE THE COURT:

SUMMARY OF ARGUMENT

I.

Assuming that *Rodrigue v. Aetna Casualty & Surety Co.*¹ requires federal courts to adjudicate all aspects of tort claims emanating from high seas platform injuries according the laws of "adjacent states," the federal courts are not obliged to apply state procedural laws in determining the timeliness of such claims.

¹395 U. S. 352, 23 L.Ed 2d 360 (1969).

A.

Even if state procedural law governing timeliness of actions must be applied to high seas platform injury claims, such application should not operate so as to bar actions that were timely when filed.

II.

For a claim to be time-barred due to *laches* there must have been *both* an *inexcusable delay* in its assertion and *prejudice* to the opposing party from such delay; if either element is missing, there is no *laches*, as a matter of law.

III.

While Congress has wide latitude in altering and amending the maritime law of the United States, it cannot encroach upon the admiralty and maritime jurisdiction of this Court either by eliminating therefrom matters clearly of admiralty cognizance or by applying diverse state laws to such matters; to the extent that *Rodrigue* condones and furthers such Congressional action, the decision should be overruled.

ARGUMENT

I.

A Statute Of Limitations² That Merely Bars A Remedy But Does Not Extinguish The Right Is Procedural In Nature And, Therefore, Is Not Binding In A Forum Other Than The One From Which The Right Emanates

Petitioner asserts that "the substantive law of the State of Louisiana was applicable to respondent's claims" and "the right to recover against a tort-feasor must be exercised by a claimant within one year; such limitation of action is a period of *peremption*."³ [Emphasis added]

A review of petitioner's authorities, however, will quickly disclose that they relate to *death* cases, rather than to claims for personal injuries. The District Court did not dismiss this action because of the time limitation set forth in Article 2315 of the Louisiana Civil Code. Its judgment reads, in pertinent part, as follows:

"... plaintiff's action is now prescribed (time-barred) pursuant to the provisions of LSA-C.C. art. 3536."⁴

Therefore, when we inquire as to the nature of the statute of limitations involved here, we must consider the Codal Article applicable to *this* case.

²Denominated "prescription" in Louisiana.

³Petitioner's Brief on the Merits, pp. 10-14.

⁴Appen. p. 152

Article 3536 of the Louisiana Civil Code⁵ is entirely separate and distinct from Article 2315.⁶ Article 3536 is a "procedural restraint which bars the remedy, but does not *extinguish the right*."⁷ Whereas, the time limitation contained in Article 2315 is an "integral part" of the right of action established by that Article for *wrongful death only*.⁸

It is true that after expiration of one year from the death, the survivors' action *per se* expires and may not be asserted in any forum. However, a right of action "prescribed" by Article 3536 is *not* extinguished by mere lapse of time; and, if it be asserted in other than a "Louisiana" forum, the timeliness of the claim will be determined by the law of that other forum.⁹

Were this a diversity-of-citizenship case, the District Court would have been obliged to apply Louisiana's Article 3536.¹⁰ But, respondent did not invoke federal

⁵Providing: "The following actions are also prescribed by one year: That for injurious words, whether verbal or written, and that for damages caused by animals, or resulting from offenses (willful injuries) or quasi offenses (torts)."

⁶Providing in pertinent part: "The right to recover all other damages caused by an offense or quasi offense, if the injured person dies, shall survive for a period of one year from the death of the deceased. . ." [Emphasis added.]

⁷Fidelity & Cas. Co. of N.Y. v. C/B Mr. Kim, 345 F.2d 45, 50 (CCA 5, 1965).

⁸Compare Kenney v. Trinidad Corp., 349 F.2d 832 (CCA 5, 1965) with Page v. Cameron Iron Works, Inc., 259 F.2d 420 (CCA 5, 1958); see also, Mejia v. U. S., 152 F.2d 686, 688 (CCA 5, 1946).

⁹Roper v. Monroe Grocer Co., 171 La. 181, 129 So. 811 (1930) and Newman v. Eldridge, 107 La. 315, 31 So. 688 (1902) clearly so hold.

¹⁰See Kozan v. Comstock, 270 F.2d 839 (CCA 5, 1959).

jurisdiction on that ground. His action is brought under federal law and, unquestionably, in a federal forum.¹¹

It is the *substantive* law of Louisiana that "prescription is *procedural* and the law of the forum governs the timeliness of the action."¹² If, therefore, the Lands Act¹³ and *Rodrigue* mandate application of Louisiana substantive law here, the law is that the period of limitation of the federal forum governs the timeliness of this suit.

Since there is no federal statute of limitations specifically applicable here, we submit that the Court of Appeals was at liberty to fashion its own rule, at least for this Circuit, and that, in so doing, it has *not* "decided a question of law in conflict with the applicable decision of this Court in *Rodrigue*," as petitioner contends.¹⁴

Rodrigue held only that Louisiana's wrongful death statute governed the substantive rights of wrongful death claimants. That statute contains a "time" provision following which the rights themselves are extinguished. The instant case, however, is a personal injury action. The time specified for bringing such a claim in Louisiana is provided in Article 3536, a codal article held repeatedly *not* to extinguish a claim and

¹¹43 U.S.C.A. §1333(b): "The United States district courts shall have original jurisdiction of cases and controversies arising out of or in connection with any operations conducted on the outer Continental Shelf. . ."

¹²*Supra*, notes 8, 9 and 10.

¹³Outer Continental Shelf Lands Act, 43 U.S.C.A. § 1333, *et seq.*

¹⁴Petitioner's Brief on the Merits, p. 13.

to be procedural only in nature. There is no sound reason to extend the holding in *Rodrigue* beyond its facts and, therefore, it should not serve as basis for dismissal of respondent's lawsuit.

A.

Assuming, *arguendo*, that *Rodrigue* does make applicable all of the diverse state statutes of limitations, of whatever character, we submit, that it is manifestly unfair to give that application retrospective effect, in view of the pre-*Rodrigue* jurisprudence¹⁵ and the circumstances of this case.

Respondent was allegedly injured in December of 1965¹⁶ and he was allowed to return to work at a somewhat lighter position in May of 1966.¹⁷ He continued at this job for about a year¹⁸ and it was not until he attempted to return to the duties of his former position in April of 1967 that he experienced further significant back difficulty.¹⁹ This action was instituted in January of 1968, less than a year from the date of the exacerbation of respondent's complaints.

During the interval from respondent's injury until he did sue, there was no "law" and no court apprising

¹⁵*Pure Oil Co. v. Snipes*, 293 F.2d 60 (CCA 5, 1961); *Movable Off-shore Co. v. Oursley*, 346 F.2d 870 (CCA 5, 1965); *Loffland Bros. Co. v. Roberts*, 386 F.2d 540 (CCA 5, 1967); *Dore v. Link Belt Co.*, 391 F.2d 671 (CCA 5, 1968).

¹⁶Appen., p. 56.

¹⁷Appen., p. 58.

¹⁸Appen., pp. 34-36.

¹⁹*Ibid.*

him or his counsel that suit must be filed within one year from the date of his initial injury. To the contrary, "the law" specified no fixed time²⁰ within which he had to act or be forever barred, as the District Court ultimately held.

We deem it significant also that, even until now, petitioner has not asserted that this claim is "stale" or that it should be dismissed for *laches*.²¹ This is true, even though under *Snipes*, *Oursley* and *Loffland Bros*,²² "the law" at all times recognized the existence of *laches* as a defense.

In dismissing this action for respondent's failure to have instituted it sooner, when he had no legal or practical compulsion to do so, we submit that the District Court has reached a harsh and unjust result. That Court, understandably, felt obliged to apply *Rodrigue* literally to this case; but, there is no need for this Court so to feel. It has said:

"Where a decision of this Court could produce substantial inequitable results if applied retroactively, there is ample basis in our cases for avoiding the 'injustice or hardship' by a holding of nonretroactivity."²³

²⁰*Supra*, note 14; and see *Flowers v. Savannah Machine & Foundry Co.*, 310 F.2d 135 (CCA 5, 1962).

²¹Petitioner's Motion to Dismiss or For Summary Judgment in the District Court is predicated solely on Article 3536 of the Louisiana Civil Code. Appen., pp. 113, *et seq.*

²²*Supra*, note 14.

²³*Cipriano v. City of Houma*, 395 U.S. 701, 23 L.Ed. 2d 647 (1969). See also: *Linkletter v. Walker*, 381 U.S. 618, 14 L.Ed. 2d 601 (1965).

Such a holding, we submit, is merited in this case, as well as the others doubtlessly pending in the Fifth Circuit. Therefore, even if it is to be the law that "prescriptions" of the adjacent States must be applied to high seas platform injury actions, we respectfully urge that there be excepted from such requirement all actions instituted prior to the *Rodrigue* decision.

II.

Laches Is An Affirmative Defense With Two Essential Elements That Must Be Pleaded And Proved By The Party Who Asserts The Doctrine

In the event this Court agrees that *laches* is the appropriate doctrine by which to determine the timeliness of this action, *no* "error was committed by the Court of Appeals for the Fifth Circuit," as suggested by petitioner.^{23A}

The Federal Rules of Civil Procedure, as amended, require that:

"In pleading to a preceding pleading, a party shall set forth affirmatively ... laches ... and any other matter constituting an avoidance or affirmative defense."²⁴

Careful examination of the Appendix prepared and presented by petitioner fails to disclose the mention

^{23A}Petitioner's Brief on the Merits, p. 15.

²⁴Rule 8(c), F.R.C.P.

of *laches*, except in the opinion of the Court of Appeals²⁵ and in the Statement of Issues that petitioner intends to present in *this* Honorable Court.²⁶

It has been mentioned previously that petitioner has never suggested, by pleading or otherwise, that this action should be dismissed because it was a "stale" claim or that petitioner was in some way "prejudiced" because the suit was not sooner filed.

Petitioner is presumed to have known that *laches* was at all times prior to *Rodrigue* available as a defense to this lawsuit, provided, of course, it could be established by proof. Yet, this defense was not urged.

The Court of Appeals, on the record before it, held that respondent was *not* guilty of *laches* and petitioner now complains of that ruling.

Based on the record, the Court of Appeals was entirely justified in holding that there was no *laches* on respondent's part.

With respect to that defense, it has been said:

"The inquiry on *laches* partakes of two parts —
 (1) the excuse for the delay [in filing suit] and
 (2) prejudice to the pursued."²⁷

²⁵Appen., pp. 194, *et seq.*

²⁶Appen., p. 212. Can it be that petitioner is guilty of *laches*?

²⁷*Fidelity & Cas. Co. of N.Y. v. C/B Mr. Kimp*, 345 F.2d 45, 50 (CCA 5, 1965).

Stress is laid upon the fact that *both* of these elements are *essential*.²⁸ Neither is present in this case.

As has been set forth heretofore, respondent was understandably not anxious to sue petitioner as long as he could continue working; there was no "law" requiring that he sue before he did. But, more importantly, once petitioner was sued, it averred no prejudice, for, indeed, there was none. The Appendix filed by petitioner amply demonstrates that petitioner was fully able to prepare its case on the merits. Factually, therefore, as the Court of Appeals correctly concluded, there was a "complete lack of any prejudice,"²⁹ hence, there could be no laches, as a matter of law³⁰ and the holding that the action was "timely filed" should not be disturbed.

III.

A Personal Injury Occurring On Or Over The High Seas Is One Within The Admiralty And Maritime Jurisdiction Of The United States

As an alternative, in the event that the judgment of the Court of Appeals is not sustainable for the reasons heretofore set forth, respondent suggests that it

²⁸Larrios v. Victory Carriers, Inc., 316 F.2d 63 (CCA 2, 1963); Akers v. States Marine Lines, Inc., 344 F.2d 217 (CCA 5, 1965); Crews v. Arundel Corp., 386 F.2d 528 (CCA 5, 1967); Fidelity & Cas. Co. of N.Y. v. C/B Mr. Kim, *supra*, note 27.

²⁹Appen., p. 206.

³⁰Larrios v. Victory Carriers, Inc.; Akers v. States Marine Lines, Inc.; Crews v. Arundel Corp.; and Fidelity & Cas. Co. of N.Y. v. C/B Mr. Kim, all *supra*.

is appropriate to re-examine the *Rodrigue* decision, itself.

No attempt will be made to reiterate the legislative proceedings attending passage of the Lands Act in the hope of discerning a different Congressional intention than was ascribed to Congress in *Rodrigue*. The Court of Appeals' opinion³¹ adequately demonstrates that obliteration of all maritime law principles aboard these high seas platforms (except to the extent that the Extension of Admiralty Act might make them applicable)³² will fall far short of affording to the high seas oil worker the high degree of protection Congress obviously thought he should receive.

It is acknowledged also that some legislators closely associated with formulation of the Lands Act believed that admiralty was not equal to the task of governing rights and remedies of personal injury litigants. Fortunately, however, "expression by the legislature of an erroneous opinion concerning the law does not alter it."³³ History tells us unmistakably that tort litigation had been quite adequately adjudicated by admiralty courts for centuries before the Lands Act was enacted³⁴ and we know that such was also the case for fifteen years following the Act's passage.³⁵

³¹Appen. p., 195.

³²*Rodrigue v. Aetna* [footnote 12], *supra*, note 1.

³³*Knickerbocker Ice Co. v. Stewart*, 253 U. S. 149, 64 L.Ed. 834, 840 (1920).

³⁴*DeLovio v. Boit*, 7 Fed.Cas. 418 (D.Mass., 1815); see also, Wiswall, "The Development of Admiralty Jurisdiction, & Practice Since 1800," p. 10.

³⁵*Pure Oil Co. v. Snipes*; *Movible Offshore Co. v. Oursley*; and *Loffland Bros., Co. v. Roberts*, *supra*, note 15.

It may be assumed further that Congress, by the Lands Act, purposely sought to "eschew altogether" the application of all admiralty law aboard these high seas structures.³⁶

But, the question we would respectfully pose is: could Congress constitutionally isolate and remove this entire area from the maritime jurisdiction of the United States?

Forty-seven years ago, when passing upon the validity of the Jones Act,³⁷ this Court observed:

"When all is considered, ... there is no room to doubt that the power of Congress extends to the entire subject [of admiralty and maritime jurisdiction], and permits of the exercise of a wide discretion. *But there are limitations which have come to be well recognized. One is that there are boundaries to the maritime law and admiralty jurisdiction which inhere in those subjects and cannot be altered by legislation, as by excluding a thing falling clearly within them, or including a thing falling clearly without. Another is that the spirit and purpose of the constitutional provision require that the enactments — when not relating to matters whose existence or influence is confined to a more restricted field [citations omitted] — shall be coextensive and operate*

³⁶Rodrigue v. Aetna, *supra*, note 1, at 395 U.S. p. 355.

³⁷46 U.S.C.A. §688, *et seq.*

uniformly in the whole of the United States."³⁸
 [Emphasis added.]

We would ask leave to question therefore, whether the Lands Act, as interpreted by *Rodrigue*, does not exceed the "limitation" placed on Congress, by "excluding a thing," to-wit personal injuries occurring on the high seas, from admiralty and maritime jurisdiction, when for centuries such "things" have fallen "clearly within" that jurisdiction.³⁹

In upholding the Ship Mortgage Act⁴⁰ against an attack on its constitutionality, while recognizing Congress' wide latitude in altering the maritime law, this Court again cautioned:

"But in amending and revising the maritime law, the Congress necessarily acts within a

³⁸*Panama R.R. Co. v. Johnson*, 264 U.S. 375, 386, 68 L.Ed. 748, 752 (1924).

³⁹Another question that might be asked is: Whether, by "eschewing altogether" maritime law for all high seas platforms throughout the entire outer Continental Shelf and substituting in its stead the diverse tort laws of the several "adjacent" states, Congress has contravened the requirement of "harmony and uniformity" that scuttled its two attempts to extend state workmen's compensation laws to a geographical area much less "traditional" to admiralty than the high seas? *Knickerbocker Ice Co. v. Stewart*, *supra*, note 33; *Washington v. Dawson & Co.*, 264 U.S. 219, 68 L.Ed. 646 (1924). Apparently, not wishing to run afoul of *Knickerbocker* and *Dawson & Co.*, Congress specifically extended the Longshoremen's Act which is unquestionably an act emanating from the constitutional grant of admiralty and maritime jurisdiction. *Crowell v. Benson*, 285 U.S. 22, 76 L.Ed. 598 (1932).

⁴⁰46 U.S.C.A. §911, *et seq.*

sphere restricted by the concept of the admiralty and maritime jurisdiction."⁴¹

Therefore, if "the concept of admiralty and maritime jurisdiction" of torts did encompass these high seas platforms, despite a contrary Congressional intention, we submit that the Lands Act could not constitutionally have ousted the admiralty or "eschewed" application of maritime law principles to torts occurring on these structures at sea.⁴²

We recognize that, in *Rodrigue*, the Court expressed doubt that "traditional admiralty principles" would apply to the platforms. But, we respectfully submit that the basis for the Court's doubt is no longer secure, being founded principally upon pre-Admiralty Extension Act⁴³ property damage jurisprudence⁴⁴ that, at best today, is only historical evidence of the feud between Lord Coke and the British Admiral.⁴⁵

⁴¹*Detroit Trust Co. v. Str. Thomas Barlum*, 293 U. S. 21, 79 L.Ed. 176, 186 (1934).

⁴²*Panama R. R. Co. v. Johnson*, *Crowell v. Benson* and *Detroit Trust Co. v. Str. Thomas Barlum*, *supra*, notes 38, 39 and 41.

⁴³46 U.S.C.A. § 740.

⁴⁴*Phoenix Construction Co. v. Str. Poughkeepsie*, 212 U.S. 558 (1908). That case seems indistinguishable from *Phila., W. & B. R. Co. v. Phila. & H. Towboat Co.*, 64 U. S. 209 (1860) except on the basis of whose ox was being gored. In *Phila. Towboat Co.*, the Court accepted admiralty jurisdiction for an owner whose vessel was holed by river piling, while, in *The Poughkeepsie*, admiralty jurisdiction was declined to a river piling owner whose property was damaged by a vessel.

⁴⁵Well documented in *DeLovio v. Bqit*, *supra*, note 34.

This Court has wisely recognized that:

"The framers of the Constitution did not contemplate that the maritime law should remain unalterable."⁴⁶

* * * *

"We have had abundant reason to realize that our experience and new conditions give rise to new conceptions of maritime concerns. These may require that former criteria of jurisdiction be abandoned, as, for example, they were abandoned in discarding the doctrine that the admiralty jurisdiction was limited to tidewaters."⁴⁷

Congress, itself, has "abandoned" *The Poughkeepsie*⁴⁸ "criteria" via the Admiralty Extension Act.⁴⁹ "New conceptions of maritime concerns" have now embraced aircraft disasters at sea,⁵⁰ and even in port.⁵¹ Indeed, whenever human suffering has cried out for relief, the admiralty and maritime jurisdiction

⁴⁶Detroit Trust Co. v. Str. Thomas Barlum, *supra*, note 41.

⁴⁷*Ibid.* at 79 L.Ed. p. 190.

⁴⁸212 U.S. 538 (1908)

⁴⁹46 U.S.C.A. § 740

⁵⁰D'Aleman v. Pan Am. World Airways, Inc., 259 F.2d 493 (CCA 2, 1958); Noel v. Linea Aeropostal Venezolana, 247 F.2d 677 (CCA 2, 1957); Higa v. Transocean Airlines, Inc., 230 F.2d 780 (CCA 9, 1955); National Airlines, Inc. v. Stiles, 268 F.2d 400 (CCA 5, 1959).

⁵¹Weinstein v. Eastern Airlines, Inc., 316 F.2d 758 (CCA 3, 1963).

has responded without hesitation through this Honorable Court.⁵²

We submit that admiralty and maritime tort jurisdiction should and does encompass these high seas structures and that a "vessel" is not indispensable to that jurisdiction.

"Every species of tort, however occurring, and whether on board a vessel or not, if upon the high seas or navigable waters, is of admiralty cognizance."⁵³

In the light of these principles and in recognition of the fact that the very existence of the structures involved in this case is necessitated by the sea, we urge, with all deference, that *Rodrigue* be re-examined and overruled. We suggest that it will do no violence to repudiate the decision. "It is a recent one. It has created no rule of property around which vested interests have clustered. It affects solely matters of a transitory nature. On the other hand, it affects seriously the lives of men, women and children, and the general welfare. *Stare decisis* is ordinarily a wise rule

⁵²*Sea Shipping Co. v. Sieracki*, 328 U.S. 85, 90 L.Ed. 1099 (1946), affording longshoremen protection against unseaworthiness; *Vaughan v. Atkinson*, 369 U.S. 527, 8 L.Ed.2d 88 (1962), creating sanctions for unjustified refusal to provide maintenance and cure to deserving seamen; and *Moragne v. States Marine Lines, Inc.*, 398 U.S. 375, 26 L.Ed.2d 339 (1970), recognizing wrongful death action for breach of maritime duties.

⁵³*Hough v. Western Transp. Co. [The Plymouth]*, 70 U.S. 20, 18 L.Ed. 125, 128 (1866).

of action. But, it is not a universal, inexorable command."⁵⁴

In conclusion, we respectfully suggest that Article 3, § 2, of the Constitution bestows upon this Court an admiralty and maritime jurisdiction amply broad enough to encompass high seas occurrences of the nature involved in this case. By interpreting the Lands Act as mandating application of diverse state tort laws to personal injuries occurring at sea, *Rodrigue* imputes to Congress a course of action that exceeds its authority and improperly encroaches upon the constitutional prerogatives of this Honorable Court in matters maritime.

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⁵⁴Brandeis, J., dissenting in *Washington v. Dawson & Co.*, 68 L. Ed. at pp. 657-658.

CERTIFICATE OF SERVICE

I, the undersigned member of the Bar of this Court, do hereby certify that two copies of the above and foregoing Brief on the Merits for Respondent have been served upon Counsel for the Petitioner by mailing the same, postage pre-paid at New Orleans, Louisiana, to Lloyd C. Melancon, Esq., 720 Hibernia Bank Building, New Orleans, Louisiana 70112, this ____ day of August, 1971.

Samuel C. Gainsburgh



Syllabus

CHEVRON OIL CO. v. HUSON

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE FIFTH CIRCUIT

No. 70-11. Argued October 20, 1971—Decided December 6, 1971

Respondent was injured in December 1965 while working on petitioner's artificial island drilling rig, located on the Outer Continental Shelf off the Louisiana coast. Allegedly, not until many months later were the injuries discovered to be serious. In January 1968 respondent brought suit for damages against petitioner in federal district court. The District Court, relying on *Rodrigue v. Aetna Casualty & Surety Co.*, 395 U. S. 352 (1969), held that Louisiana's one-year limitation on personal injury actions applied rather than the admiralty laches doctrine, and granted petitioner's motion for summary judgment. *Rodrigue* had held that state law and not admiralty law applied to fixed structures on the Outer Continental Shelf under the Outer Continental Shelf Lands Act (hereinafter Lands Act), and extended to that area as federal laws the laws of the adjacent State "to the extent that they are applicable and not inconsistent" with federal laws. Respondent argued on appeal that in view of pre-*Rodrigue* jurisprudence making admiralty law (including the laches doctrine) applicable, it would be unfair to give that decision retrospective effect. The Court of Appeals, not reaching that argument, reversed, holding that Louisiana's "prescriptive" time limitation, which barred the remedy but did not extinguish the right to recovery, was not binding outside a Louisiana forum. Consequently, the court concluded that the time limitation was not "applicable" of its own force and was "inconsistent" with the admiralty laches doctrine, which though not directly applicable by virtue of *Rodrigue* was applicable as a matter of federal common law. *Held*:

1. The Lands Act, as interpreted in *Rodrigue*, requires that a State's statute of limitations be applied to actions for personal injuries occurring on fixed structures on the Outer Continental Shelf. The fact that the Louisiana law is "prescriptive" does not make it inapplicable as federal law under the Lands Act, and a

federal court may not apply a laches test to preclude application of the state time limitation. Pp. 100-105.

2. The Louisiana one-year statute of limitations should not, however, bar respondent's action here since retroactive application of that statute under *Rodrigue* would deprive respondent of any remedy at all on the basis of the unforeseeable superseding legal doctrine of that decision. Pp. 105-109.

430 F. 2d 27, affirmed.

STEWART, J., delivered the opinion of the Court, in which BURGER, C. J., and BRENNAN, WHITE, MARSHALL, and BLACKMUN, JJ., joined. DOUGLAS, J., filed a separate opinion, *post*, p. 109.

Lloyd C. Melancon argued the cause and filed a brief for petitioner.

Samuel C. Gainsburgh argued the cause and filed a brief for respondent.

MR. JUSTICE STEWART delivered the opinion of the Court.

The respondent, Gaines Ted Huson, suffered a back injury while working on an artificial island drilling rig owned and operated by the petitioner, Chevron Oil Co., and located on the Outer Continental Shelf off the Gulf Coast of Louisiana. The injury occurred in December 1965. Allegedly, it was not until many months later that the injury was discovered to be a serious one. In January 1968 the respondent brought suit for damages against the petitioner in federal district court. The respondent's delay in suing the petitioner ultimately brought his case to this Court.

The issue presented is whether the respondent's action is time barred and, more particularly, whether state or federal law determines the timeliness of the action. That issue must be resolved under the Outer Continental Shelf Lands Act, 67 Stat. 462, 43 U.S.C. § 1331 *et seq.* (hereinafter "Lands Act"), which governs injuries occurring

on fixed structures on the Outer Continental Shelf. When this lawsuit was initiated, there was a line of federal court decisions interpreting the Lands Act to make general admiralty law, including the equitable doctrine of laches, applicable to personal injury suits such as the respondent's.¹ The petitioner did not question the timeliness of the action as a matter of laches. While pretrial discovery proceedings were still under way, however, this Court announced its decision in *Rodrigue v. Aetna Casualty & Surety Co.*, 395 U. S. 352. That decision entirely changed the complexion of this case. For it established that the Lands Act does not make admiralty law applicable to actions such as this one. Relying on *Rodrigue*, the District Court held that Louisiana's one-year limitation on personal injury actions, rather than the admiralty doctrine of laches, must govern this case. It concluded, therefore, that the respondent's action was time barred and granted summary judgment for the petitioner.²

On appeal, the respondent argued that *Rodrigue* should not be applied retroactively to bar actions filed before the date of its announcement.³ But the Court of Appeals declined to reach that question. Instead, it held that the interpretation of the Lands Act in *Rodrigue* does not compel application of the state statute of limitations or prevent application of the admiralty doctrine of laches. It concluded that the doctrine of laches should have been applied by the District Court and, therefore, reversed that court's judgment and remanded the case for trial. 430 F. 2d 27. We granted certiorari to consider the Court of Appeals' construction of the Lands

¹ See *infra*, at 107.

² The decision of the District Court is unreported (ED La., Civil Action No. 68-19D).

³ The respondent has made the same argument to this Court.

Act and of *Rodrigue*. 402 U. S. 942. We hold that the Lands Act, as interpreted in *Rodrigue*, requires that the state statute of limitations be applied to personal injury actions. We affirm the judgment of the Court of Appeals, however, on the ground that *Rodrigue* should not be invoked to require application of the Louisiana time limitation retroactively to this case.

I

The Lands Act makes the Outer Continental Shelf, including fixed structures thereon, an area of exclusive federal jurisdiction, 43 U. S. C. § 1333 (a)(1). The Act extends the laws of the United States to this area, 43 U. S. C. § 1333 (a)(1), and provides that the laws of the adjacent State shall also apply "[t]o the extent that they are applicable and not inconsistent" with applicable federal laws, 43 U. S. C. § 1333 (a)(2).⁴ To the extent

⁴ The full text of § 1333 (a)(1) and § 1333 (a)(2) reads:

"(a) (1) The Constitution and laws and civil and political jurisdiction of the United States are extended to the subsoil and seabed of the outer Continental Shelf and to all artificial islands and fixed structures which may be erected thereon for the purpose of exploring for, developing, removing, and transporting resources therefrom, to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State: *Provided, however,* That mineral leases on the outer Continental Shelf shall be maintained or issued only under the provisions of this subchapter.

"(2) To the extent that they are applicable and not inconsistent with this subchapter or with other Federal laws and regulations of the Secretary now in effect or hereafter adopted, the civil and criminal laws of each adjacent State as of August 7, 1953 are declared to be the law of the United States for that portion of the subsoil and seabed of the outer Continental Shelf, and artificial islands and fixed structures erected thereon, which would be within the area of the State if its boundaries were extended seaward to the outer margin of the outer Continental Shelf, and the President shall determine and publish in the Federal Register such projected lines extending

that a comprehensive body of federal law is applicable under § 1333 (a)(1), state law "inconsistent" with that law would be inapplicable under § 1333 (a)(2).

In *Rodrigue*, we clarified the scope of application of federal law and state law under § 1333 (a)(1) and § 1333 (a)(2). By rejecting the view that comprehensive admiralty law remedies apply under § 1333 (a)(1), we recognized that there exists a substantial "gap" in federal law. Thus, state law remedies are not "inconsistent" with applicable federal law. Accordingly, we held that, in order to provide a remedy for wrongful death, the "gap" must be filled with the applicable body of state law under § 1333 (a)(2).

The Court of Appeals acknowledged that *Rodrigue* clearly establishes that the remedy for personal injury, as for wrongful death, cannot be derived from admiralty law but must be governed by the law of the adjacent State, Louisiana. But the Court held that Louisiana's time limitation on personal injury actions need not be applied with the substantive remedy. It supported this holding by reference to the terms of § 1333 (a)(2) that limit the application of state law under the Lands Act. The Louisiana time limitation, the Court of Appeals reasoned, is not "applicable" of its own force and is "inconsistent" with the admiralty doctrine of laches. The court held that, despite the holding in *Rodrigue*, the laches doctrine is applicable as a matter of federal common law. We must disagree.

The Court of Appeals did not suggest that state statutes of limitations are *per se* inapplicable under § 1333 (a)(2). Rather, it focused on the peculiar nature of

seaward and defining each such area. All of such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States. State taxation laws shall not apply to the outer Continental Shelf."

the Louisiana time limitation on personal injury actions found in Art. 3536, La. Civ. Code Ann. Article 3536 provides that personal injury actions shall be "prescribed" by one year. The Court of Appeals attached much significance to the fact that Art. 3536 "prescribes," rather than "perempts," such actions. Under Louisiana law, "prescription," unlike "peremption," bars the remedy but does not formally extinguish the right to recovery. See *Page v. Cameron Iron Works*, 259 F. 2d 420, 422-424; *Istre v. Diamond M. Drilling Co.*, 226 So. 2d 779, 794-795 (La. App.); *Succession of Pizzillo*, 223 La. 328, 335, 65 So. 2d 783, 786. This characterization has importance under principles of conflicts of law. It has been held, as a matter of Louisiana conflicts law, that mere "prescriptive" time limitations are not binding outside their own forum. See *Fidelity & Casualty Co. v. C/B Mr. Kim*, 345 F. 2d 45, 50; *Kozan v. Comstock*, 270 F. 2d 839, 841; *Istre v. Diamond M. Drilling Co.*, *supra*, at 795. Reasoning from this principle of conflicts law, the Court of Appeals concluded that the "prescriptive" limitation is not "applicable" in a federal court adjudicating a claim under the Lands Act.

We hold, however, that the "prescriptive" nature of Art. 3536 does not undercut its applicability under the Lands Act. Under § 1333 (a)(2) of the Act, "[s]tate law bec[omes] federal law federally enforced." *Rodrigue v. Aetna Casualty & Surety Co.*, *supra*, at 365. It was the intent of Congress, expressed in the Senate Committee Report, in the Conference Report, and on the floor of the Senate, that state laws be "adopted" or "enacted" as federal law. See *id.*, at 357-358. Thus a federal court applying Louisiana law under § 1333 (a)(2) of the Lands Act is applying it as federal law—as the law of the federal forum. Since the federal court is not, then, applying the law of another forum in

the usual sense, ordinary conflict of laws principles have no relevance. Article 3536 is "applicable" in federal court under the Lands Act just as it would be applicable in a Louisiana court.⁵

The policies underlying the federal absorption of state law in the Lands Act make this result particularly obvious. As we pointed out in *Rodrigue*, Congress recognized that "the Federal Code was never designed to be a complete body of law in and of itself" and thus that a comprehensive body of state law was needed. *Id.*, at 358, 361. Congress also recognized that the "special relationship between the men working on these artificial islands and the adjacent shore to which they commute" favored application of state law with which these men and their attorneys would be familiar. *Id.*, at 365; see *id.*, at 363. If Congress' goal was to provide a comprehensive and familiar body of law, it would defeat that goal to apply only certain aspects of a state personal injury remedy in federal court. A state time limitation upon a remedy is coordinated with the substance of the remedy and is no less applicable under the Lands Act.⁶

The application of Louisiana's Art. 3536 is, of course, subject to the absence of "inconsistent" and applicable federal law. The Court of Appeals acknowledged that *Rodrigue* forecloses direct applicability of the "inconsistent" laches doctrine through admiralty law. But, by applying laches as a matter of federal common law, it

⁵ This is not to imply that a federal court adjudicating a claim under state law as absorbed in the Lands Act must function as it would in a diversity case. See *Erie R. Co. v. Tompkins*, 304 U. S. 64; *Guaranty Trust Co. v. York*, 326 U. S. 99; *Levinson v. Deupree*, 345 U. S. 648, 651. We hold only that the state statute of limitations is part of the law to be applied in federal court as it would be part of the law to be applied in a state court.

⁶ Here we are not dealing with mere "housekeeping rules" embodied in state law. Cf. *Hanna v. Plumer*, 380 U. S. 460, 473.

sought to reintroduce the doctrine through a back door.⁷ This approach subverts the congressional intent documented in *Rodrigue, id.*, at 359-366, that admiralty doctrines should *not* apply under the Lands Act.

Moreover, the Court of Appeals' approach amounts to an inappropriate creation of federal common law. Even when a federal statute creates a wholly federal right but specifies no particular statute of limitations to govern actions under the right, the general rule is to apply the state statute of limitations for analogous types of actions. See *Auto Workers v. Hoosier Corp.*, 383 U. S. 696; *Cape v. Anderson*, 331 U. S. 461; *Campbell v. Haverhill*, 155 U. S. 610; Note, Federal Statutes Without Limitations Provisions, 53 Col. L. Rev. 68 (1953). A special federal statute of limitations is created, as a matter of federal common law, only when the need for uniformity is particularly great or when the nature of the federal right demands a particular sort of statute of limitations. See *Holmberg v. Armbricht*, 327 U. S. 392; *McAllister v. Magnolia Petroleum Co.*, 357 U. S. 221. But, under the Lands Act, there is not even such limited freedom to create a federal statute of limitations, for Congress specified that a comprehensive body of state law should be adopted by the federal courts in the absence of existing federal law. Congress specifically rejected national uniformity and specifically provided for the application of state remedies which demand state, not federal, statutes of limitation. Thus, Congress made clear provision for filling in the "gaps" in federal law; it did not intend that federal

⁷ The Court of Appeals justified its creation of federal common law in this instance by suggesting that personal injury actions under the Lands Act are in a "quasi maritime area which is traditionally imbued with the laches doctrine and which presents a strong federal urge toward uniformity." 430 F. 2d, at 32.

courts fill in those "gaps" themselves by creating new federal common law.⁸

II

Although we hold that Louisiana's one-year statute of limitations must be applied under the Lands Act as interpreted in *Rodrigue*, we do not blind ourselves to the fact that this is, in relevant respect, a pre-*Rodrigue* case. The respondent's injury occurred more than three years before the announcement of our decision in *Rodrigue*. He instituted the present lawsuit more than one year before *Rodrigue*. Yet, if the Louisiana statute of limitations controls in this case, his action was time barred more than two years before *Rodrigue*. In these circumstances, we must consider the respondent's argument that the state statute of limitations should be given nonretroactive application under *Rodrigue*.

In recent years, the nonretroactive application of judicial decisions has been most conspicuously considered

⁸Contrary to the suggestion by Mr. Justice Douglas, our holding today is consonant with *Levinson v. Deupree*, *supra*, n. 5. Since *Levinson* involved a federal court's obligation to adopt state procedural rules in an admiralty action, it has very limited relevance to the instant case, which involves an action under a statute which ousts admiralty law and specifically directs that state law shall be adopted as federal law. Moreover, *Levinson* held only that state "procedural niceties relating to amendments of pleadings" need not be applied by federal admiralty courts, and the opinion emphasized that it was not dealing with an important part of the state action, such as a statute of limitations. 345 U. S., at 651-652. As pointed out above, our holding today does not extend to such state "house-keeping rules." See n. 6; *supra*.

Richards v. United States, 369 U. S. 1, also referred to by Mr. Justice Douglas, held that, under the Federal Tort Claims Act, a federal court must apply "the whole law of the State where the act or omission occurred." *Id.*, at 11. Insofar as *Richards* bears on the present case, it supports our holding that federal courts should not create interstitial federal common law when the Congress has directed that a whole body of state law shall apply.